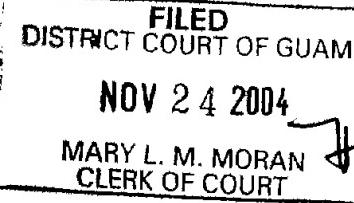


1 **MANTANONA**
2 LAW OFFICE

3 GCIC Bldg., Suite 601B
4 414 West Soledad Avenue
5 Hagatna, Guam 96910
6 Telephone (671) 472-3666
7 Facsimile (671) 472-3668



Attorney for **Lourdes M. Perez and Artemio B. Ilagan**

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF GUAM

JULIE BABAUTA SANTOS, et. al.,) Civil Case No. 04-00006
Petitioners,)
vs.) DEFENDANTS PEREZ AND ILAGAN'S
FELIX P. CAMACHO, etc., et. al.,) REQUEST FOR HEARING AND
Respondents.) OBJECTIONS TO (1) PETITIONER'S
) MOTION FOR ORDERS APPROVING THE
) ADMINISTRATION PLAN AND AMENDED
) NOTICE; AND (2) THE ATTORNEY
) GENERAL OF GUAM'S MPA IN
) RESPONSE TO MOTION FOR ORDERS
) APPROVING ADMINISTRATION PLAN
)

Defendants Lourdes M. Perez, the Director of Administration and Artemio B. Ilagan, the Director of the Department of Revenue and Taxation hereby objects to: (1) Petitioner Julie B. Santos' October 25, 2004 Motion to Approve the Administration Plan and Amended Notice; and (2) the Memorandum of Points and Authorities in Response to Petitioner's Motion for Orders Approving Administration Plan filed by the Attorney General, purportedly on behalf of the Director of Administration and the Director of Revenue and Taxation. The Director of Administration and Director of Revenue and Taxation also respectfully asks for the opportunity to submit a brief stating their concerns about the Plan and an opportunity to be heard by this Court.

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2 Defendants Perez and Ilagan, in their official capacities, do not feel that they are
3 being adequately represented by the Attorney General's Office in this particular litigation.
4 Further, they do not have the confidence in their representation and do not feel that their
5 individual and departmental needs are addressed and protected. (See declarations of
6 Defendant's Ilagan and Perez.) Further, Defendant Ilagan believes that there is clear
7 conflict in his representation and sets forth his basis as contained in his declaration. (See
8 Defendant Ilagan's declaration.) Defendant Ilagan believes that the Office of the Attorney
9 General of Guam has currently set a priority in representing the interest the People as
10 opposed to his interest as a party in the above entitled matter. Both parties expressed
11 their disagreement with counsel in regards to their legal opinion as to the appropriateness
12 of the settlement and their non-criminal liability for the actions called for in the settlement
13 and administrative plan.

14 Since they do not believe they are adequately protected criminally and are not
15 being advised properly in regards to their individual liability, they have sought their own
16 legal counsel. Their representation and contact by the Attorney General's office as clients
17 in regards to this matter has been minimal.

18 Indeed, the Attorney General frankly admits that he has decided that he has no
19 duty to consult with his client in this litigation. The Attorney General has taken this
20 position even though it is contrary to an Order of the Guam District Court issued less than
21 two (2) weeks ago in the Proposal A litigation.¹ That Order held that a purported
22 stipulated preliminary injunction would be granted as the Attorney General appeared to be
23 acting without the consent of the defendants he claimed to represent (the Legislature, the

24 ¹ These cases are *Merrill v. Guam Election Comm'n*, Dist. Ct. of Guam Case No. CV04-00046, and
25 *Aguon-Schulte v. Guam Election Comm'n*, Dist. Ct. of Guam Case No. CV-00045.

1 Governor, and the Election Commission). (Benjamin Decl. Exh. F at 3 (holding that “[i]t
2 seems inappropriate to bind the Government of Guam to a stipulation and order where it
3 appears that the Attorney General may not be the government’s counsel”)).²

4 The issue of whether the Director of Administration and the Director of Revenue
5 and Taxation has the right to have independent counsel who will faithfully represent his
6 interests in litigation is now before the Guam District Court in that Proposal A litigation.
7 The Attorney General has filed a motion to strike the appearances of independent counsel
8 for the Legislature and Governor. Given that this identical issue is already pending in
9 those cases, it may make sense for the Court and parties to wait until that issue is
10 determined before proceeding further in this case. Certainly, basic due process confirms
11 the importance of either having the issue of who represents the Directors resolved in this
12 Court or another before further proceedings are conducted.

13 As stated previously, Defendants Perez and Ilagan are concerned about their own
14 criminal liability in that of their employees. The Governor, in his request for hearing and
15 objection filed November 9, 2004, briefly addresses the potential criminal liability as set
16 forth in 5 GCA §22401.

17 Defendants Perez and Ilagan would like the Court to review the statute as said. 5
18 GCA §22401(a)(1)(2).

19 (a) No officer or employee of the government of Guam,
including the Governor of Guam, shall:

20 _____
21 ² The Attorney General’s action are also contrary to an express ruling of the Guam Supreme Court,
which back in February 2003 expressly told the Attorney General he could not act in litigation on behalf of
the government defendants without their consent. In the Guam Supreme Court, the Attorney General
attempted to assert the right to withdraw his clients’ brief. His clients were the executive officers of the
Government of Guam, including the Governor. The Supreme Court refused to permit the withdrawal of the
brief until the Attorney General obtained the consent of the executive officers at issue. See *Pangelinan v.*
Gutierrez, Sup. Ct. Case no. CVA 02-003 (Order 2/10/2003) at 1 (“on February 6, 2003, at the oral
argument in this matter, the court ordered the Attorney General to submit the written consent of all named
government parties to withdraw brief. The Attorney General submitted such written consent on February 6,
2003. *Based upon the consent of all named government parties* the court hereby grants the Attorney
General’s motion to withdraw the brief.”) (emphasis added).

- (1) Make or authorize any expenditure from, or create or authorize any obligation under, any appropriation or fund in excess of the amount available therein, or for other than an authorized purpose;
 - (2) Commence, continue, or proceed with any operational activity, construction, improvement, contract, or obligation without an appropriation or fund the payment thereof; or after any such appropriation or fund is exhausted;

Emphasis Added.

Aside from the liability set forth previously in the Governor's objection, more specifically in regards to 5 GCA§22401(a)(3), Defendants Perez and Ilagan are concerned about their liability under 5 CGA §22401(a)(2). The liability under this subsection is wholly separate and has not been addressed.

All parties in this matter agree that there is an Earned Income Tax Credit "Fund" though it is known the fund has no monetary resources. Defendants Perez and Ilagan asserts that the act of payment of the obligation with the appropriated funds is clearly illegal and would expose them to criminal liability. It is clear that in a reading of §22401(a)(2), that pursuant to the settlement they would be proceeding with operational activities of a fund by paying the obligation of said fund knowing the fund is exhausted which is clearly illegal.

Further, Defendants Perez and Ilagan hereby join in the objections set forth in the Governor's objection filed November 9, 2004.

Defendants Perez and Ilagan, and their Deputy Directors were not given any opportunity to review the proposed settlement agreement before it was entered. See Declarations of Defendants Ilagan and Perez and Joseph C. Manibusan. Defendants state that the settlement agreement was hurried and executed without a full and careful analysis by either department in regards to the feasibility and impact it would have on the

1 Government. Both Defendants in regards to their departments have reviewed the
2 settlement agreement and the implications of implementing the administrative plan.

3 In regards to the Department of Administration, it is clear that the financial impact on
4 the Government of Guam would be enormous and detrimental to the overall operations of
5 the Government. The implementation of the plan will result eventually in the non-payment
6 of vendors, the failure to appropriate funds to government agencies which will jeopardize
7 the general operations of those departments. Lastly, the shortage of funds will eventually
8 lead to hardships and make shortage of funding for employee salaries for the Government
9 of Guam.

10 In regards to the Department of Revenue and Taxation, the implementation of the
11 plan will call for the reassignment of all the employees of the processing department to be
12 shifted to administer the plan. The successful implementation of the plan will lead the
13 Government of Guam to incur at a minimum an estimated \$12 million dollars in interest
14 penalties owed to entitled taxpayers. Thus, the settlement rushed into by the Petitioner
15 and the Acting Governor will have long-term reaching and devastating effects to the
16 Government of Guam.

17 Defendants, Perez and Ilagan, along with the Governor wish to file a formal
18 opposition to Petitioner's October 25, 2004 Motion. In that opposition, they will fully brief
19 the issues raised herein, which they realize were not previously raised with the Court by
20 the Attorney General. They also wish to fully respond to the Attorney General's filing.
21 However, the Defendants' new counsel first must have an opportunity to fully review the
22 pleadings and to prepare the Defendants' response.

23 The Defendants' further request that hearings be held to address the issues that
24 exist once briefing can be completed. This would be consistent with a federal court's duty
25 to protect the interest in considering any settlement of a class action. See *In re Mego Fin.*

1 Corp. Sec. Litig., 213 F.3d 454, 458 (9th Cir. 2000). If the Court wishes to wait to address
2 the issue of who may represent the Defendants' pending determination of that identical
3 issue in the cases of Proposal A litigation, the Defendants' ask that the Court so inform
4 the parties.

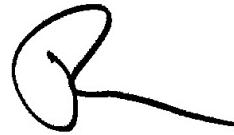
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6 Dated this 24th of November, 2004.

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MANTANONA LAW OFFICE
Attorney for **Lourdes M. Perez**
and Artemio B. Ilagan



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11 RAWLEN MT MANTANONA
12 A duly licensed employee
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3 **CERTIFICATE OF SERVICE**
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I, Rawlen M. T. Mantanona, do hereby certify that on the 24th day of November, 2004, caused the above Defendants Perez and Ilagan's Request for Hearing and Objections to (1) Petitioner's Motion for Orders Approving the Administration Plan and Amended Notice; and (2) the Attorney General of Guam's MPA in Response to Motion for Orders Approving Administration Plan to be served upon the UNITED STATES OF AMERICA by delivering and leaving one (1) copy of same at the offices of its attorneys of record, as follows:

10 Michael Phillips, Esq.
11 Phillips & Bordallo, P.C.
12 410 West O'Briend Drive
13 Hagatna, GU 96910

Shannon Taitano, Esq.
Office of the Governor of Guam

Douglas Moylan
Office of the Attorney General
Suite 2-200E, Guam Judicial Center
120 West O'Brien Drive
Hagatna, GU 96910

Rodney Jacob, Esq.
Calvo & Clark, LLP
655 S. Marine Corps Drive
Tamuning, GU 96913

17 Dated: November 24, 2004

MANTANONA LAW OFFICE

18
19 Attorney for **Lourdes M. Perez and**
 Artemio B. Ilagan

20 
By:

21
22

RAWLEN M T MANTANONA
 A duly licensed employee.